

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEVADA

SOUTH FORK BAND COUNCIL OF  
WESTERN SHOSHONE OF NEVADA; et al.,

Plaintiffs,

v.

UNITED STATES DEPARTMENT OF THE  
INTERIOR; et al.,

Defendants,

and

BARRICK CORTEZ INC.

Defendant-Intervenor.

Case No. 3:08-cv-00616 LRH (RAM)

**AMENDED JOINT STIPULATION  
AND [REDACTED] PROTECTIVE  
ORDER**

Plaintiffs South Fork Band Council of Western Shoshone of Nevada, Te-Moak Tribe of Western Shoshone Indians of Nevada, Timbisha Shoshone Tribe, Western Shoshone Defense Project, and Great Basin Resource Watch (“Plaintiffs”), Defendants United States Department of the Interior (“DOI”), United States Bureau of Land Management, Gerald M. Smith, District Manager, Battle Mountain District Office (“Defendants”), and Defendant-Intervenor Barrick Cortez Inc. (“Defendant-Intervenor”) stipulate and agree to the following:

1. The parties may produce documents in the course of this litigation that are confidential and proprietary and limit disclosure by marking each page of the document with the words “Protected Document.”

2. Only the parties’ litigation counsel of record and the parties’ consultants and/or experts retained by the parties having a need for the information in the performance of their duties in this litigation shall have access to the Protected Documents.

3. The persons who are permitted to receive the Protected Documents shall not use the Protected Documents or their contents, for any purpose other than this litigation and any appeals or subsequent remands. No person who receives, or otherwise has access to, the Protected

1 Documents, or the contents thereof, solely by virtue of their disclosure in this case shall make  
2 unauthorized disclosure of them or their content.

3 4. If any person or party who receives the Protected Documents receives a request,  
4 made pursuant to any federal or state law, from any person not subject to this Joint Stipulation or  
5 Protective Order for access to, or copies of, any documents provided to the party pursuant to this  
6 Joint Stipulation, that person or party shall not provide such access or copies without first  
7 providing notice of the request to the party that produced the Protected Documents sufficiently in  
8 advance of any disclosure so that the producing party may object or seek a protective order.

9 5. Any person or party intending to disclose, use, release, or provide to any person or  
10 entity any Protected Document by claiming to be in the possession of the Protected Document  
11 from a source other than this case must (1) provide notice of its intent to the party that produced  
12 the Protected Documents sufficiently in advance of any disclosure so that the producing party  
13 may object or seek a protective order, and (2) upon the request of the party that produced the  
14 Protected Document, demonstrate how the person or party intending to disclose or otherwise use  
15 the Protected Document came to be in possession of that information. Upon receiving the  
16 response from the person or party intending to disclose or otherwise use the Protected Document  
17 to the request contemplated by number (2) of the preceding sentence, the party that produced the  
18 Protected Documents may seek a protective order, and the person or party intending to disclose or  
19 otherwise use the Protected Document, or contents thereof, may not do so until the court resolves  
20 the motion for a protective order. Any person or party who makes a disclosure of information  
21 which is contained in the Protected Documents shall, upon written request by the producing party,  
22 promptly identify the independent, publicly available source of the challenged information.  
23 Failing or refusing to do so shall be deemed a violation of this Protective Order.

24 6. The Protected Documents may be disclosed only to the parties' litigation counsel,  
25 or persons in the employ of such litigation counsel, or to the parties' consultants and/or experts  
26 retained by the parties who have a need for the information in the performance of their duties in  
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1 this litigation. The Protected Documents shall not be disclosed to the parties or their employees,  
2 agents, or members, except as provided herein.

3 7. Except for the Court and its employees, all individuals having access to the  
4 Protected Documents and all individuals to whom these Protected Documents or the information  
5 therein are disclosed, other than counsel of record, shall be required to sign a copy of the  
6 Acknowledgment of Joint Stipulation form attached hereto as Exhibit A indicating that they have  
7 read and agree to abide by the terms of this Joint Stipulation and Protective Order. Counsel of  
8 record for each receiving party will send copies of the signed acknowledgment forms to the  
9 attorney of record for the producing party.

10 8. No party or non-party shall file or submit for filing as part of the court record any  
11 documents under seal without first obtaining leave of court. Notwithstanding any agreement  
12 among the parties, the party seeking to file a paper under seal bears the burden of overcoming the  
13 presumption in favor of public access to papers filed in court. If a party wishes to file a Protected  
14 Document with the Court and therefore must move to file it under seal, it shall first provide notice  
15 of its intent to the party that produced the Protected Document, sufficiently in advance, so that the  
16 party that produced the Protected Document may join in the motion to seal.

17 9. All individuals subject to this Joint Stipulation who have access to the Protected  
18 Documents shall return or certify the destruction of any and all such Protected Documents, copies  
19 or reproductions, including, without limitation, any partial copies or reproductions, or any  
20 transcriptions or hand-written notes regarding the contents of the Protected Documents, in their  
21 possession to counsel of record for the producing party within thirty (30) days of the termination  
22 of this litigation, including all applicable appeals or remands. This obligation to return or destroy  
23 the Protected Documents and content shall occur prior to the termination of this litigation when  
24 an individual or entity is no longer a party or when an attorney or expert is no longer retained to  
25 work on this case, whichever applies. Individuals returning documents under any circumstance  
26 shall certify in writing that the documents, copies and reproductions, in whole or in part, have  
27 been returned or have been destroyed.

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1           10. Any receiving party may challenge the designation of a Protected  
2 Document or request that a Protected Document be disclosed to a person not contemplated by this  
3 Joint Stipulation. In such case, counsel shall confer in good faith in an attempt to resolve the  
4 issue. If they are unsuccessful, the issue will be presented to the Court. Unless and until the  
5 Court determines that the document is not entitled to the protected designation or that a Protected  
6 Document may be disclosed to an additional person (subject to compliance with paragraph 7,  
7 above), the receiving party shall treat the document as subject to this Joint Stipulation and  
8 Protective Order.

9           11. This Joint Stipulation and Protective Order does not constitute a ruling on the  
10 question of whether any Protected Document is admissible and does not constitute any ruling on  
11 any potential objection to the admissibility of any Protected Document. The parties reserve the  
12 right to challenge the use or admissibility of any Protected Document.

13           12. This Joint Stipulation and Protective Order shall survive the termination of this  
14 case and is binding for all time without further order of the Court.  
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1 Dated: September 9, 2009 Respectfully submitted,

2 GREGORY A. BROWER  
3 United States Attorney  
4 GREG ADDINGTON  
5 Assistant United States Attorney  
6 Nevada Bar #6875  
7 100 West Liberty St., Suite 600  
8 Reno, NV 89501  
9 (775) 784-5438  
10 (775) 784-5181 – facsimile

11 By: /s/ Ty Bair (with permission by Michael R. McCarthy)

12 JOHN C. CRUDEN  
13 Acting Assistant Attorney General  
14 SARA E. COSTELLO  
15 Trial Attorney  
16 TY BAIR  
17 United States Department of Justice  
18 Environment & Natural Resources Division  
19 Natural Resources Section P.O. Box 663  
20 Washington D.C. 20044-0663  
21 (202) 305-0476 – phone  
22 (202) 305-0506 – facsimile  
23 Attorneys for Defendants

24 By: /s/ Roger Flynn (with permission by Michael R. McCarthy)

25 HENRY EGGHART, Nevada Bar No. 3401  
26 630 East Plumb Lane  
27 Reno, NV 89502  
28 (775) 333-5282  
(303) 823-4732 – facsimile  
ROGER FLYNN  
JEFFREY C. PARSONS  
WESTERN ACTION MINING PROJECT  
P.O. Box 349  
440 Main Street, #2  
Lyons, CO 80540  
(303) 823-5738  
(303) 823-5732 – facsimile  
Attorneys for Plaintiffs

By: /s/ Michael R. McCarthy

JIM B. BUTLER, Nevada Bar No. 8389  
MICHAEL R. MCCARTHY, Nevada Bar No. 9345  
FRANCIS M. WIKSTROM, Utah Bar No. 3462  
MICHAEL L. LARSEN, Utah Bar No. 4069  
PARSONS BEHLE & LATIMER  
333 Holcomb Ave.  
Reno, NV 89501  
(775) 323-1601  
(775) 348-7250 – facsimile

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201 South Main Street, Suite 1800  
Salt Lake City, UT 84111  
(801) 532-1234  
(801) 536-6111 – facsimile  
Attorneys for Defendant-Intervenor

The Court hereby APPROVED this Joint Stipulation and it is SO ORDERED, this 14th  
day of September, 2009.



UNITED STATES MAGISTRATE JUDGE

CERTIFICATE OF SERVICE

I hereby certify that on September 9, 2009, I electronically filed the foregoing **JOINT STIPULATION AND [PROPOSED] PROTECTIVE ORDER** with the Clerk of Court using the CM/ECF system which sent notification of such filing to the following:

Henry Egghart, Nevada Bar No. 3401  
630 East Plumb Lane  
Reno, NC 89502  
Telephone: (775) 333-5282  
Facsimile: (303) 823-5732  
Email: [hegghart@nvbell.net](mailto:hegghart@nvbell.net)

Roger Flynn (*pro hac vice*)  
Jeffrey C. Parsons (*pro hac vice*)  
WESTERN ACTION MINING  
PROJECT  
P.O. Box 349  
440 Main Street, #2  
Lyons, CO 80540  
Telephone: (303) 823-5738  
Facsimile: (303) 823-5732  
Email: [wmap@igc.org](mailto:wmap@igc.org)

Attorneys for Plaintiffs

Ty Bair  
Trial Attorney  
Sara E. Costello, Trial Attorney  
Trial Attorney  
United States Department of Justice  
Environmental & Natural Resources  
Division  
General Litigation Section  
P.O. Box 663  
Washington, D.C., 20044-0663  
Telephone: (202) 305-0476  
Facsimile: (202) 305-0506  
Email: [tyler.bair@usdoj.gov](mailto:tyler.bair@usdoj.gov)  
[sara.costello@usdoj.gov](mailto:sara.costello@usdoj.gov)

Gregory A. Bower  
United States Attorney  
Greg Addington  
Nevada Bar No. 6875  
Assistant United States Attorney  
United States Attorney's Office  
100 West Liberty Street  
Suite 600  
Reno, NV 89501  
Telephone: (775) 784-5438  
Facsimile: (775) 784-5181

Attorneys for Federal Defendants

/s/ Michael R. McCarthy

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# Exhibit A

4846-1054-3620.1



IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEVADA

SOUTH FORK BAND COUNCIL OF  
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Case No. 3:08-cv-00616 LRH (RAM)

**ACKNOWLEDGMENT OF JOINT  
STIPULATION AND PROTECTIVE  
ORDER**

I, \_\_\_\_\_, hereby acknowledge that I have read and understand  
the \_\_\_\_\_, 2009 Joint Stipulation and Protective Order (“Protective Order”), which  
pertains to Protected Documents marked as such. I hereby agree to be bound by the terms of the  
Joint Stipulation and Protective Order. Specifically, I agree to following:

1. I agree that I will use the Protected Documents disclosed to me only as permitted  
by the Joint Stipulation and Protective Order and only for purposes of this litigation including any  
appeals and not for any other purpose;

2. I agree that any Protected Documents disclosed to me in this case, as well as all  
copies thereof or notes referring to them, will be destroyed or returned to counsel for the  
producing party within thirty (30) days after the termination of my work on this case or the  
termination of this litigation, including any appeals, whichever comes earlier;

3. I agree that I will abide by all terms of the Joint Stipulation and Protective Order;

4. I hereby confirm that my duties under the Joint Stipulation and Protective Order  
are continuing and shall survive the termination of this case; and

4846-1054-3620.1

1           5.       I hereby subject myself to the jurisdiction of the United States District Court for  
2 the District of Nevada for the purpose of enforcing my obligations hereunder.

3 Dated: \_\_\_\_\_  
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6 \_\_\_\_\_  
(Signature)  
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(Printed Name)  
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